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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO

12
13 CINEMATRONICS, INC.,)
14 a California corporation,)
15 Plaintiff,) Case No. 451437
16 v.) DECLARATION OF
17) JAMES PIERCE
18 VECTORBEAM, a California)
19 corporation; EXIDY, INCORPORATED,)
20 a California corporation;)
21 and DOES I through X, inclusive,)
22 Defendants.)
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I, JAMES PIERCE, declare:

I

I am President of CINEMATRONICS, INC. the plaintiff herein.
I have personal knowledge of the following and if called as a
witness could testify competently thereto.

II

Gilbert J. Levine was the former General Manager and Chief
Financial Officer of VECTORBEAM. On or about October 4, 1979 Mr.

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3 Levine tendered his written resignation as both Chief Financial
4 Officer and General Manager of VECTORBEAM. His resignation was
5 accepted by the Board of Directors and thereafter his employment
6 pursuant to his contract was terminated. No further contracts
7 with Mr. Levine were entered into. A copy of said resignation,
8 designated EXHIBIT "A", is attached hereto and by reference made
9 a part hereof as if fully set forth herein at length.

10 Mr. Kauffman sets forth in his Declaration that Mr. Levine
11 is currently making a claim against EXIDY and/or VECTORBEAM pur-
12 suant to an employment contract. As is obvious from EXHIBIT "A"
13 Mr. Levine terminated his services immediately prior to the sale
14 of VECTORBEAM to EXIDY. I do not know upon what basis Mr. Levine
15 could make a claim for wages pursuant to his contract, if he is
16 making one at all. Mr. Kauffman provides no evidence of such
17 claim with his Declaration.

18 Defendants' counsel sets forth in his statement of facts
19 that CINEMATRONICS gave a written indemnification to EXIDY regard-
20 ing the purported Levine employment contract. There is attached
21 to the pleading a photocopy of a handwritten document apparently
22 signed by Mr. Kauffman and Mr. DeCaro which document I ^{NAO} ~~have~~ never
23 seen and I ^{NAO} ~~have~~ no knowledge of. ^{prior to 4/3/80,} As President of CINEMATRONICS
24 and a member of the Board of Directors I can state truthfully that
25 such indemnification was never ~~authorized~~ and Mr. DeCaro was never
26 authorized to enter into any such agreement on behalf of CINEMA-
27 TRONICS.

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III

Mr. Kauffman sets forth in his Declaration that he has made several requests of CINEMATRONICS to execute a subordination agreement lowering the priority of our obligations in relation to their receivable financing through Bank of America. Mr. Kauffman neglects to inform the Court that he has never made a tender of funds which would satisfy the balance due. Mr. Kauffman has demanded that we sign the subordination agreement and subsequent to the signing thereof he will pay the funds. Mr. Kauffman is currently in arrears on the purchase money note in excess of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) on the purchase and sale of VECTORBEAM, he has failed and refused to provide proper and acceptable accounting for the number of units sold since his company has operated VECTORBEAM and he then expects me to execute a subordination agreement weakening substantially our creditor position in exchange for a mere promise to pay the funds which he is already obligated to do. I refuse to execute the subordination agreement and continue to do so until EXIDY and VECTORBEAM bring current all payments under both the promissory note, and the patent license agreement together with a complete accounting of all units sold. I believe I have acted as any other reasonable business man would have in the same situation. Defendants' counsel in his memorandum of law stresses the fact that our refusal to sign the subordination agreement was in flagrant violation of the license contract. No comment is made though on the neglect and refusal of VECTORBEAM and/or EXIDY to provide a complete accounting of all units sold under the license agreement or their own refusal

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3 to honor their obligation under the purchase money promissory
4 note.

IV

6 Mr. Kauffman indicates in his Declaration that EXIDY had no
7 opportunity to perform an inventory on the assets of VECTORBEAM.
8 Moreover, it is stated that CINEMATRONICS maintained to EXIDY that
9 a minimal amount of inventory was obsolete and/or unusable.

10 Mr. Kauffman's statement is a lie. On December 1, 1979 Mr.
11 Kauffman accompanied by the accountant for EXIDY together with
12 three (3) or four (4) employees spent four (4) to five (5) hours
13 very carefully taking inventory all the assets of VECTORBEAM.
14 Prior to this CINEMATRONICS offered at its own expense to have
15 Rhodes and DeWitt perform a certified inventory for the benefit
16 of EXIDY but Mr. Kauffman indicated that by reason of the fact
17 that VECTORBEAM was only fifteen (15) miles from the office of
18 EXIDY and since they were both in the same business i.e. manu-
19 facturing video games his employees could produce an inventory
20 quicker and at a much lesser cost than Rhodes and DeWitt. In
21 furtherance of this agreement the above described inventory was
22 carried out.

At all times when CINEMATRONICS owned VECTORBREAM we had month-end inventories. The month-end inventory for November, 1979 matched the inventory that EXIDY performed on December 1, 1979 except for some minor variances which would be expected in this sort of situation. After performing the inventory neither Mr. Kauffman, his accountant nor any of the employees made any comment

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3 regarding any obsolescence of any assets. Mr. Kauffman stated that
4 the inventory was acceptable to EXIDY.

5 Moreover, on Page 4, Paragraph 6 of the Stock Purchase Agree-
6 ment the parties set forth as follows:

7 "However, if after the close, and before March
8 1, 1980, EXIDY believes that adjustments are nec-
9 essary based on an overstatement of the accounts
10 receivable, or a material omission of notes payable
11 or accounts payable and/or significant inventory
12 shortages, then EXIDY shall so advise CINEMATRONICS,
13 specifying the reasons and grounds for the proposed
14 adjustments. The parties agree that adjustments plus
15 or minus Fifty Thousand Dollars (\$50,000) are not
16 material and adjustments based on inventory 'write
17 downs' (not based on physical shortages) will not be
18 applicable to any valuation adjustment for the pur-
19 poses of this agreement."

20 As set forth above there shall be no adjustments based upon
21 inventory "write downs". Write downs is an industry-wide term
22 meaning equipment which may or may not be obsolete. In the video
23 game industry a new game may reach its peak popularity in five (5)
24 or six (6) weeks and thereafter decline. The total commercial
25 life span of video games is usually measured in months. As a
26 result it is incumbent upon manufacturers in our industry to
27 constantly produce new games and new ideas. As a result of the
28 above various parts which are necessary for the manufacture of
one (1) game would be unusable for a new game being manufactured
several months later. In that limited sense these parts may be
deemed "obsolete". Several months thereafter the company may be
producing an entirely new game where these particular parts will
be required and they will no longer be deemed obsolete therefore
the term obsolescence is very difficult to apply to our industry.

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3 Additionally, if we manufacture a particular game it is necessary
4 under the various licensing agreements that we maintained a parts
5 supply for the repair of such games therefore even though parts
6 are not necessary in the manufacturing process since the particular
7 game is no longer being produced it is necessary that these parts
8 be retained for the purposes of repair and maintenance.

9 With the above in mind that it was agreed upon by and between
10 the parties to the Stock Purchase Agreement that there would be
11 no adjustments based upon inventory write downs. Defendants now
12 come before the Court claiming that a good portion of the in-
13 ventory of VECTORBEAM is obsolete. Their claims should not be
14 considered by the Court because first they took inventory of all
15 the physical assets of the corporation prior to purchasing same
16 and second by agreement obsolescence is not a proper basis to
17 request an adjustment to the contract.

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V

19 Defendants and their counsel are attempting to lead the Court
20 to believe that CINEMATRONICS defrauded EXIDY by selling them a
21 business consisting of obsolete assets and extensive undisclosed
22 financial commitments. I must direct the Court's attention to
23 Mr. Kauffman's Declaration wherein he states that since EXIDY
24 purchased VECTORBEAM up until April 30, 1980, a period of four
25 (4) months, VECTORBEAM has sold eight hundred seventy-three (873)
26 units of Tailgunner II which produced net sales in the amount of
27 ONE MILLION EIGHT HUNDRED TWENTY-NINE THOUSAND DOLLARS (\$1,829,000).

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3 Additionally there are approximately one hundred twenty-five (125)
4 units in production soon to be available for sale for a total
5 four (4) month production run of almost one thousand (1,000) units
6 which should produce net sales in excess of 2.2 Million Dollars.
7 As the former owner of VECTORBEAM and the former producer of
8 Tailgunner. I have personal knowledge of the fact that the net
9 profit per unit to the company is SEVEN HUNDRED DOLLARS (\$700).
10 I had recently discussed this fact with Mr. Kauffman and he has
11 confirmed to me that VECTORBEAM is earning a net profit of SEVEN
12 HUNDRED DOLLARS (\$700) per unit. With eight hundred seventy-three
13 (873) units sold and one hundred twenty-five units (125) soon to
14 be available for sale VECTORBEAM will have a total four (4) month
15 net return of almost SEVEN HUNDRED THOUSAND DOLLARS (\$700,000).
16 CINEMATRONICS sold VECTORBEAM to EXIDY in consideration for a
17 promissory note in face value of FIVE HUNDRED TWENTY-SIX THOUSAND
18 NINE HUNDRED AND FORTY-TWO DOLLARS (\$526,942). In a four (4)
19 month period of time VECTORBEAM has produced gross sales in excess
20 of four (4) times the total purchase price of the company for a
21 total net return almost one and one-half (1-1/2) times the purchase
22 price. With all of these funds available to defendants they have
23 made one (1) payment under the promissory note of THIRTY-FIVE
24 THOUSAND DOLLARS (\$35,000) and have made one payment under the
25 license agreement and they have provided no accounting as required
26 by the agreement.

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I declare under penalty of perjury that the foregoing is

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3 true and correct. Dated this 6th day of May, 1980 in El Cajon,
4 California.

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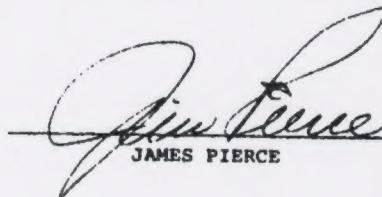
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JAMES PIERCE

VECTORBEAM

33441 CENTRAL AVE. / UNION CITY, CA 94587 / (415) 489-2000

October 4, 1979

TO: THE BOARD OF DIRECTORS OF VECTORBEAM
RE: RESIGNATION OF GILBERT J. LEVINE

Gentlemen:

Effective immediately, I resign as Chief Financial Officer of Vectorbeam.

Effective as soon as you can select a replacement but in no more than thirty (30) days, I resign as General Manager.

Recently, I proposed a business plan which I believe is in the best interest of Vectorbeam and its shareholder Cinematronics. You have chosen not to adopt that plan. My feeling is that your program should be implemented by a Chief Financial Officer/General Manager who supports and believes in your program.

With all best wishes,


Gilbert J. Levine 10/4/79

GJL:ch